

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 32998 of 2004(C)

PETITIONER:

LAILA T.ABRAHAM,
ASSISTANT LIBRARIAN GRADE-II, UNIVERSITY LIBRARY,
MAHATMA GANDHI UNIVERSITY, PRIYADARSHINI HILLS,
KOTTAYAM.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS:

1. MAHATMA GANDHI UNIVERSITY,
PRIYADARSHINI HILLS, KOTTAYAM, REPRESENTED BY ITS
REGISTRAR.
2. THE VICE CHANCELLOR,
MAHATMA GANDHI UNIVERSITY, PRIYADARSHINI HILLS,
KOTTAYAM.
3. THE REGISTRAR,
MAHATMA GANDHI UNIVERSITY, PRIYADARSHINI HILLS,
KOTTAYAM.

BY ADV. SRI.V.K.MUHAMMAD YOUSUF, SC, M.G.UTY.
SRI.T.A.SHAJI, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT. P1: COPY OF ORDER NO.26/1991/A-11(2)ADMN DT. 1.8.91 ISSUED BY THE UNIVERSITY.
- EXT. P2: COPY OF ORDER NO.23/96/AV(I)/ADM DT.25.4.2001 ISSUED BY THE UNIVERSITY.
- EXT. P3: COPY OF THE ORDER NO.1030(F)/96/94/AV-1/ADM DT.4.6.94 ISSUED BY THE UNIVERSITY.
- EXT. P4: COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 14.6.2001.
- EXT. P5: COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ON 27.11.2003.
- EXT. P6: COPY OF THE JUDGMENTIN W.P.(C) NO.6268/04 DT. 23.2.04 OF THIS HON'BLE COURT.
- EXT. P7: COPY OF MINUTES OF THE 536TH MEETING OF THE SYNDICATE HELD ON 20.7.04.
- EXT. P8: COPY OF THE ORDER DATED 18.8.97 GRANTING UGC BENEFIT TO SRI.HUMAYOON KABIR.

I.A. NO.2670/2005:

- EXT. P8: COPY OF THE ORDER NO.1781/2004/I/AV/ADMN DATED 18-11-2004 ISSUED BY THE UNIVERSITY TO THE PETITIONER.
- EXT. P8(A): COPY OF JUDGMENT DATED 23-09-2002 OF THIS HONOURABLE COURT IN OP NO.35607/2001.
- EXT. P9: COPY OF THE RECOMMENDATIONS OF THE SUB COMMITTEE OF THE SYNDICATE OF THE UNIVERSITY FOR RECONSIDERATION OF THE CASE OF THE PETITIONER.
- EXT. P10: COPY OF THE MINUTES OF THE 5.46TH MEETING DATED 3-5-2005 OF THE SYNDICATE OF MAHATMA GANDHI UNIVERSITY.
- EXT. P11: COPY OF G.O.(RT) 1725/94/H.EDN DATED 16-11-1994.
- EXT. P12: COPY OF G.O.(RT) 1510/97/H.EDN. DATED 9-12-1997.

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EXT. P13: COPY OF NEWS ITEM APPEARED IN 'MANGALAM' DAILY DATED 4-3-2005.

EXT. P14: COPY OF ORDER DATED 23-7-2005 ISSUED BY THE UNIVERSITY OF KERALA.

EXT. P15: COPY OF G.O.(P) NO.171/99/HEDN DATED 21-12-1999.

1ST RESPONDENT'S EXHIBITS:

EXT. R1(A): COPY OF THE ORDER NO.17864/C3/98/H. EDN. OF THE GOVERNMENT.

EXT. R1(B): COPY OF THE ORDER NO.AD.AV.2-22910/03 OF THE UNIVERSITY.

EXT. R1(C): COPY OF THE ORDER NO.13285/C3/2004/H. EDN. OF THE GOVERNMENT.

/TRUE COPY/

P.A. TO JUDGE

JP

S. SIRI JAGAN, J.

W.P. (C) No. 32998 OF 2004 C

Dated this the 14th day of November, 2006

J U D G M E N T

Before dealing with the issues involved in this writ petition I may note that although the petitioner states in the writ petition that she was initially appointed as Library Assistant in the year 1990, now she states that she joined duty as Library Assistant in the University Library of Mahatma Gandhi University on 18.9.1989 F.N. In support of this contention, she has also placed before me order No.2426/90/AII(2)/ADMN dated 17.12.1990 of the Mahatma Gandhi University declaring her probation, wherein her date of joining duty is shown as 18.9.1989 which is not disputed by the respondents.

2. The issue involved in this writ petition is as to whether the petitioner is entitled to be inducted into the UGC scheme. Now, the petitioner is working as Assistant Librarian Grade II in the Mahatma Gandhi University. According to her, she is liable to be placed in the UGC scale and promoted to the post of Assistant Librarian(Senior Grade) with effect from the date of completion of six years in the post of Assistant Librarian. The contention of the petitioner is that she completed six years on 4.6.2000 but was not placed in UGC scale. She filed a representation on 14.6.01, which is Ext.P4 in the writ petition, before the Registrar of the University for

a direction to place her in the UGC scale with effect from 4.6.94. Because of lack of response on the part of the Registrar, petitioner sought orders from this court by filing a writ petition. In Ext.P6 judgment in that writ petition, this court recorded the submission made by the standing counsel of the University that the matter would properly be looked into and decision taken within a period of three months from the date of receipt of a copy of the judgment. On 20.7.04, the Syndicate of the University considered the case of the petitioner and took a decision to grant UGC scale to the petitioner. This is evidenced by Ext.P7 extract of the minutes of the 536th meeting of the Syndicate of the University held on 20.7.04. Subsequently the Vice Chancellor of the University passed orders on 30.10.04 approving the decision taken by the Syndicate. However, formal orders by the Registrar of the University was not issued pursuant thereto. It is under the above circumstances, the petitioner has approached this court seeking the following reliefs:

(i) to issue a writ of mandamus or any other appropriate writ, order or direction, directing the 1st respondent to place the petitioner in the UGC scheme with effect from her date of promotion;

(ii) to issue a writ of mandamus or any other appropriate writ, order or direction, directing the 3rd respondent to issue the consequential order passed by the University pursuant to the decision of the Syndicate evidenced by Ext.P7 and also the decision of the Hon'ble Vice Chancellor dt.30.10.04.

3. This court had by an interim order dated 12.11.04 issued a direction to the 3rd respondent to pass consequential orders in the light of the order passed by the Vice Chancellor on 30.10.04 placing the petitioner in the UGC scale. It is reported that pursuant to the same, orders have been passed placing the petitioner in the UGC scale by Ext.P8 order. However, later on by Ext.P9, the Sub Committee constituted for considering the question of placement of the petitioner in the UGC scale recommended that the petitioner need not be placed in the UGC scale since she does not possess the qualifications prescribed by the UGC for induction into the UGC scale. The petitioner has therefore amended the writ petition challenging Ext.P9 as also the consequential order Ext.P10 passed in that regard. This court had also passed interim orders staying those orders.

4. Originally, the petitioner's contention was that the question of acquiring of necessary qualification was applicable only in respect of direct recruitment and not in respect of placement of already existing personnel in the UGC scale. However, now the petitioner brings to my attention an amended provision in the Kerala University First Ordinances, 1978 made on 15.7.05 in respect of Assistant Librarian regarding qualification and method of appointment. The same is contained in Sl. No.86 of the Schedule of the Kerala University First Ordinances, 1978. The same reads as

under:

Sl. No	Designation	Scale of pay	Age	Qualifications		Method of recruitment
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>General</i> <i>(5)</i>	<i>Technical</i> <i>(6)</i>	<i>(7)</i>
86	Assistant Librarian	560-1100		(i) Qualifying in the national level test conducted for the purpose by the UGC or any other agency approved by the UGC. (1) Those Library staff who were in service on or before 31.3.1990, as and when promoted to the post of Assistant Librarian, shall be placed under UGC scheme by exempting them from the revised UGC qualification of NET introduced in 1990 and 1996 UGC revision to Library Staff. (2) Those Library Staff who entered service after 31.3.1990 till 2002, shall acquire M.Phil/Ph.D/University level Eligibility Test equivalent to NET conducted by the University for including them under UGC scheme as and when promoted to the post of Assistant Librarian. (ii) Master's degree in Library Sciences/ Information Sciences/ Documentation or an equivalent professional degree with at least 55% marks or its equivalent grade of B in the UGC seven point scale plus a consistently good academic record, computerization of Library.		The Vacancies of Assistant Librarian will be filled up in the ratio of 3:1 for promotion and direct recruitment.

5. The petitioner submits that by virtue of Section 99 of the Mahatma Gandhi University Act, Kerala University First Ordinances have been adopted for the service of the Mahatma Gandhi University until they are replaced by the statutes and ordinances to be made under the Mahatma Gandhi University Act. It is submitted before me that the Mahatma Gandhi University has not promulgated any First Ordinances and they are still following the

Kerala University First Ordinances in respect of qualification, scale of pay and method of appointment of personnel in the University. The counsel now submits that by virtue of this amendment, the petitioner has become entitled to be exempted from the qualification prescribed by UGC such as minimum percentage of marks and NET qualification for the purpose of UGC placement. In the above circumstances, the petitioner seeks a direction from this court confirming her induction in the UGC scale pursuant to interim orders of this court.

6. The contention of the standing counsel for the University is that only those employees, who possess the qualification prescribed by the UGC as on 1.4.1990 and who possess the prescribed qualification like minimum percentage of marks and NET qualification, only are entitled to be inducted into the UGC scale. He would further submit that the amendment of the Kerala University First Ordinances is not applicable to the petitioner since under section 99 of the Mahatma Gandhi University Act only those statutes and ordinances which were in force on the date of the commencement of the Act is applicable to the Mahatma Gandhi University and since on the date of commencement of the Act the amendment which is relied upon by the petitioner was not in force, she cannot take advantage of that amendment for getting placement in the UGC. In this respect, I am of opinion that in so far

as the Mahatma Gandhi University has not yet promulgated any ordinance in respect of qualification, method of appointment, scale of pay, etc. relating to those employees but adopted the Kerala University first Ordinances such adoption should be with all amendments made from time to time to the said ordinance. Otherwise it would lead to anomalous results. As such, I am satisfied that the qualification prescribed for the post of Assistant Librarian, as amended by order dated 15.7.05 of the Kerala University First Ordinances, applies to the petitioner's case and going by that she is eligible for exemption from the revised UGC qualifications for becoming eligible for UGC scale since she was in service before 31.3.1990. As a consequence, she is entitled to induction into the UGC scale. It goes without saying that in view of my above finding, the subsequent orders passed by the University namely, Exts.P9 and P10 would be invalid and unenforceable. The petitioner would be entitled to all consequential benefits flowing from such induction including arrears of pay, higher scale, etc.

The writ petition is allowed as above.

(S. SIRI JAGAN, JUDGE)

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